

FIREARMS

Henderson v. U.S., --- U.S. --- (2015)

Decided May 18, 2015

FACTS: Following his arrest for a felony, Henderson was required to turn over lawfully owned firearms. He ultimately pled guilty to the felony and as such, under 18 U.S.C. §922(g), was prohibited from possessing firearms. He asked the FBI, which held the weapons, to transfer them to a friend who had purchased them. The FBI refused and Henderson went to court, seeking the transfer to either his wife or a friend. The District Court denied him, finding that the “requested transfer would give him constructive possession of the firearms in violation of §922(g).” Upon appeal, the Eleventh Circuit affirmed the rule.

Henderson sought certiorari, and the U.S. Supreme Court granted review.

ISSUE: May a court approve the transfer of a felon’s guns, being held by law enforcement, to a third party?

HOLDING: Yes

DISCUSSION: The Court noted that in fact, 922(g) proscribes only possession, but not necessarily ownership. That possession, however, may be actual or constructive, and both are prohibited. The Court noted that “actual possession exists when a person has direct physical control over a thing,” while “constructive possession is established when a person, though lacking such physical custody, still has the power and intent to exercise control over the object.” All parties agreed that “§922(g) prevents a court from ordering the sale or other transfer of a felon’s guns to someone willing to give the felon access to them or to accede to the felon’s instructions about their future use.” The Government argued that by selecting the “first recipient” – a felon would still be in constructive possession of the weapons – and that the only permissible transfer occurs when the guns are transferred “to a licensed dealer or other party who will sell the guns for him on the open market.”

The Court, however, found that the “Government’s theory wrongly conflates the right to possess a gun with another incident of ownership, which §922(g) does not affect: the right merely to sell or otherwise dispose of that item.” In this situation, the felon will have nothing to do with the weapons “before, during, or after the transaction in question, except to nominate their recipient.” In such situations, the Court noted “the arrangement serves only to divest the felon of his firearms—and even that much depends on a court’s approving the designee’s fitness and ordering the transfer to go forward.” Felons in this situation do not have any possession interests, but only “naked right of alienation—the capacity to sell or transfer his guns, unaccompanied by any control over them.” The Court ruled that all that matters “is whether the felon will have the ability to use or direct the use of his firearms after the transfer.”

The Court ruled that the courts “may approve the transfer of guns consistently with §922(g) if, but only if, that disposition prevents the felon from later exercising control over those weapons, so that he could either use them or tell someone else how to do so.” Turning them over to a firearms dealer would accomplish that aim, but also the transfer of the guns “to a person who expects to maintain custody of them, so long as the recipient will not allow the felon to exert any influence

over their use.” The trial court “may properly seek certain assurances: for example, it may ask the proposed transferee to promise to keep the guns away from the felon, and to acknowledge that allowing him to use them would aid and abet a §922(g) violation.” If the Court is “satisfied that will be the case, the felon’s request may be granted.”

The Court vacated the decision of the Eleventh Circuit and remanded the case.

FULL TEXT OF OPINION: http://www.supremecourt.gov/opinions/14pdf/13-1487_16gn.pdf